

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

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| EXXON MOBIL CORPORATION, | : |
| | : |
| Plaintiff, | : |
| | : |
| - v. - | : |
| | : |
| MAURA TRACY HEALEY, Attorney General | : |
| of Massachusetts, in her official capacity, | : |
| | : |
| Defendant. | : |
| | : |
| -----X | |

No. 4:16-cv-469-K

**PROPOSED *AMICI* STATES' MOTION FOR LEAVE TO FILE A
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION
TO DISMISS AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

Pursuant to Local Rules 7.1 and 7.2, and this Court's inherent authority, the States of Maryland, New York, Alaska, Connecticut, Hawai'i, Illinois, Iowa, Kentucky, Maine, Minnesota, Mississippi, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia and U.S. Virgin Islands ("proposed *amici* States") respectfully move this Court for leave to file a Memorandum of Law in Support of Defendant's Motion To Dismiss and in Opposition to Plaintiff's Motion for a Preliminary Injunction, which is being filed contemporaneously with this motion and in support of this motion.

INTERESTS OF PROPOSED *AMICI CURIAE*

As set forth in the memorandum of law supporting this motion, the proposed *amici* States have strong interests in the outcome of this litigation. The proposed *amici* States have a compelling interest in preserving the traditional authority of their Attorneys General to investigate and combat violations of state law—including the authority to issue civil administrative subpoenas, which are often called civil investigative demands (CIDs). And the

proposed *amici* States also have a keen interest in safeguarding the established role of their state courts as the proper forum for adjudicating objections to a CID issued by a State's Attorney General pursuant to that State's laws.

Exxon Mobil Corporation (Exxon) seeks a federal injunction and declaratory judgment prohibiting the Massachusetts Attorney General from seeking to enforce a CID issued to Exxon pursuant to Massachusetts law, even though the Massachusetts state courts have not yet completed their review of the CID's propriety in a contemporaneous state court proceeding. But allowing the recipient of a state Attorney General's CID to challenge the CID through a federal lawsuit rather than through an available and adequate proceeding in the courts of the Attorney General's State would undermine the States' sovereign interests in ensuring that their state courts review the propriety of CIDs issued under their state laws. And permitting federal lawsuits such as Exxon's lawsuit here would also undermine the States' ability to investigate and halt misconduct that harms the citizens of their State.

The proposed *amici* States accordingly seek to file this brief to protect our sovereign interests and preserve the roles of our Attorneys General and courts in this nation's system of dual sovereignty. In our brief, we provide the Court with useful information about the traditional investigatory powers of state Attorneys General and existing state procedures that provide CID recipients with a full and fair opportunity to challenge state-issued CIDs in state court. We also demonstrate that governing precedents—and the federalism and comity concerns that underpin those cases—bar a recipient of a state Attorney General's CID from bringing an unnecessary federal lawsuit to challenge the CID rather than utilizing a comprehensive state court process for objecting to the CID.

CONCLUSION

Local Rule 7.2(b) permits an *amici curiae* brief to be filed with leave of the judge presiding over the litigation. For the reasons stated above and in the supporting memorandum of law, proposed *amici* States believe that their brief will offer an important perspective on the issues presented in this litigation and help the Court resolve those issues. We therefore respectfully seek leave to file the supporting memorandum of law.

Dated: Baltimore, Maryland
August 17, 2016

Respectfully submitted,

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CERTIFICATE OF CONFERENCE (Local Rule 7.1)

Thiru Vignarajah, counsel for movant the State of Maryland, conferred via telephone on August 5, 2016, with Daniel Toal, counsel for plaintiff Exxon Mobil Corporation. On August 6, 2016, Thiru Vignarajah received an e-mail from Michele Hirshman, counsel for plaintiff Exxon Mobil Corporation, stating that plaintiff opposes this motion. On August 15, 2016, Judith Vale, counsel for movant the State of New York, left a voicemail for Daniel Toal regarding the amendment of this motion to add States that joined the brief after the initial filing date. On August 16, 2016, Judith Vale received a voicemail from Justin Anderson, counsel for plaintiff Exxon Mobil Corporation, stating that plaintiff continues to oppose the motion.

Judith Vale conferred via telephone on August 4, 2016, with Assistant Attorney General Christophe Courchesne, counsel for defendant Massachusetts Attorney General Maura Healey, and received confirmation on that date that defendant consents to this motion. Judith Vale conferred via telephone on August 16, 2016, with Assistant Attorney General Melissa Hoffer, counsel for defendant Massachusetts Attorney General Maura Healey, about the amendment of this motion, and received confirmation on that date that defendant continues to consent to the motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2016, I caused the foregoing Proposed *Amici* States' Motion for Leave To File a Memorandum of Law in Support of Defendant's Motion To Dismiss and in Opposition to Plaintiff's Motion for a Preliminary Injunction to be served on all parties via the Court's CM/ECF system.

/s/Thiruvendran Vignarajah
Thiruvendran Vignarajah